

0905-0236P

IN THE U.S. PATENT AND TRADEMARK OFFICE

In re application of		Before the Board of Appeals	
Akihisa YAMAZAKI		Appeal No.:	
Appl. No.:	09/578,679	Group:	2681
Filed:	May 26, 2000	Examiner:	SHEILA B. SMITH
Conf.:	9832		
For:	DATA COMMUNICATION SYSTEM		

APPEAL BRIEF TRANSMITTAL FORM

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

April 8, 2005

Sir:

Transmitted herewith is an Appeal Brief on behalf of the Appellants in connection with the above-identified application.

- ☐ The enclosed document is being transmitted via the Certificate of Mailing provisions of 37 C.F.R. § 1.8.

A Notice of Appeal was filed on February 9, 2005.

- ☐ Applicant claims small entity status in accordance with 37 C.F.R. § 1.27

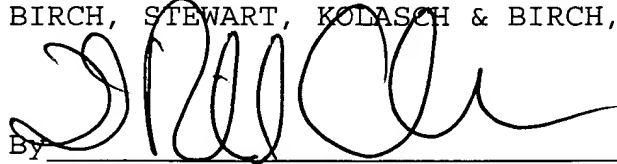
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Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

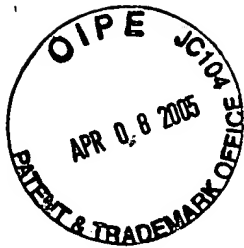


By _____
D. Richard Anderson, #40,439


DRA/CMV/jdm
0905-0236P

P.O. Box 747
Falls Church, VA 22040-0747
(703) 205-8000

Attachment(s)



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PATENT
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IN RE APPLICATION OF

BEFORE THE BOARD OF APPEALS

Akihisa YAMAZAKI

APPEAL NO.:

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EXAMINER: Sheila B. SMITH

FOR: DATA COMMUNICATION SYSTEM

APPEAL BRIEF



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FOR: DATA COMMUNICATION SYSTEM

APPEAL BRIEF
ON BEHALF OF APPELLANT:
AKIHISA YAMAZAKI

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MS APPEAL BRIEF
Board of Patent Appeals
and Interferences
P.O. Box 1450
Alexandria, VA 22313-1450

April 8, 2005

Sir:

Appellant hereby submits the following Appeal Brief in support of the Notice of Appeal filed February 9, 2005.

I. REAL PARTY IN INTEREST

The real party in interest is the assignee of the entire interest in the above-captioned patent application, Fuji Photo Film Co., Ltd., 210 Nakanuma, Minami-Ashigara-shi, Kanagawa 250-0123, Japan.

II. RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

III. STATUS OF THE CLAIMS

Claims 1-8 are pending in the above-captioned application, and each of these claims is presently rejected. The rejection of claims 1-8 is being appealed.

IV. STATUS OF AMENDMENTS

No amendments were filed after the final rejection dated November 10, 2004.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The invention of the subject application provides for a data communication system including a mobile telephone capable of communicating with a communication apparatus via a network and an image processing unit capable of data communication with the mobile telephone and of image output. The mobile telephone includes a data receiving unit for receiving data transmitted from the communication apparatus. [Page 10, lines 19-23]. The data received by the mobile telephone includes information identifying the received data as voice, text, image, or moving picture data. [Fig. 5; page 14, line 25 - page 15, line 24]. The mobile telephone further includes a data transmitting unit for transmitting the data received by the first data receiving unit to the image processing unit. [Page 11, line 27 - page 12, line 12]. An incoming voice alert generating unit is also included in the mobile telephone for issuing an incoming call alert when received data represents voice data. [Page 16, lines 11-17].

The mobile telephone further provides for an incoming call alert generating unit for issuing a first incoming call alert when the received data represents voice data and a second incoming call alert, which is different from the first incoming call alert, when the received data represents image data. [Page 19, lines 8-18].

The mobile telephone further includes a reception incapable data transmitting unit which, when the image processing unit is incapable of receiving data, transmits data indicative thereof to the communication apparatus that transmitted the data. [Page 10, line 27 - page 11, line 2; page 18, lines 1-6].

The mobile telephone further includes a setting unit for setting which of the plurality of image processing units is to receive the image data [Page 20, line 25 - page 21, line 17]; and an incoming call alert generating controller for controlling the plurality of image processing units in such a manner wherein the image processing unit that has been set by the setting unit will issue an incoming call alert when it receives data representing image data. [Page 22, lines 4-15].

The data communication system further includes an image processing unit wherein the image processing unit includes a receiving unit for receiving data transmitted from the mobile telephone. [Page 12, lines 6-12]. The image processing unit further includes an incoming image alert generating unit for generating an incoming call alert when data that has been received by the image processing unit represents image data. [Page 17, lines 9-17].

The summary of the claimed invention herein has been made to comply with the Patent Office rules in submitting briefs and is not to be considered as limiting the claimed invention.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1-8 are rejected under 35 U.S.C. § 102(b) as being anticipated by *Mizikovsky* (USP 5,559,860) (hereinafter, “*Mizikovsky*”).

VII. ARGUMENTS

A. Argument Summary

The reasoning provided in support of the rejection of claims 1-8 under 35 U.S.C. § 102(b) as being anticipated by *Mizikovsky* fails to establish *prima facie* anticipation. Generally, the deficiencies of the rejection are that the rejection attributes certain claimed features to *Mizikovsky* that a detailed reading of the reference reveals are not taught therein. These deficiencies exist for the rejection of each of claims 1-8.

B. Legal Requirements of *Prima facie* Anticipation

In order to properly anticipate Appellant’s claimed invention under 35 U.S.C. § 102(b), each and every element of the claim in issue must be found, either expressly described or under the principles of inherency, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051 (Fed. Cir. 1987). “The identical invention must be shown in as complete detail as is contained in the . . . claims.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913 (Fed. Cir. 1989). Finally, the elements must be arranged as required by the claims, but this is not an *ipsissimis verbis* test, i.e., identity of terminology is not required. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

C. The Rejection Fails to Establish *Prima Facie* Anticipation of Independent Claim 1

Independent claim 1 is directed to a data communication system comprising a mobile telephone capable of communicating with a communication apparatus via a network, and an image

processing unit capable of data communication with a mobile telephone and of image output. The mobile telephone includes, *inter alia*, a first data receiving unit for receiving data transmitted from the communication apparatus wherein the received data includes information identifying the received data as voice, text, image or moving picture data. The mobile telephone further includes an incoming-voice alert generating unit for issuing an incoming-call alert when data that has been received by the first data receiving unit represents voice data. The image processing unit includes an incoming-image alert generating unit for generating an incoming-call alert when data that has been received by the second data receiving unit represents image data.

1. *Mizikovsky* fails to teach or suggest the first data receiving unit of independent claim 1

In maintaining her rejection of independent claim 1, the Examiner asserts in paper 13, page 2, paragraph 1, that *Mizikovsky* teaches:

...mobile telephone includes: a first data receiving unit (44) for receiving data transmitted from said communication apparatus (which reads on column 6 lines 7-21) wherein the received data includes information identifying the received data as voice, text, image or moving picture data (which reads on Caller ID processor 44 is adapted to compare the received calling party identifying data with the identifying data previously stored in caller ID memory 46 to determine if the calling party is one of the previously selected, or pre-programmed calling parties disclosed in column 8 lines 13-18);

Appellant disagrees that *Mizikovsky* discloses “a first data receiving unit wherein the received data includes information identifying the received data as voice, text, image, or moving picture data.”

The disclosure of *Mizikovsky* is directed to an apparatus for selectively answering an incoming call transmitted from a cellular base station to a mobile station based upon the telephone number of a calling party. An ID processor is programmed by a user of the mobile station to store selected telephone numbers corresponding to calling party telephone numbers, which serve to

uniquely identify the calling parties. The processor is also programmed by the user to select predetermined response categories and to assign desired ones of those response categories to each of the stored calling parties' telephone numbers. When an incoming call is received at the mobile station, the calling party's telephone number is compared with the stored telephone numbers, previously programmed by the user, to detect an incoming call from a particular calling party. Depending upon the response category assigned to incoming calls from that particular calling party, the selected response is initiated. Responses to the incoming calls include distinctive ringing (to indicate high or low priority or long distance calls), the activation of a voice message recorder, communication scrambling device, facsimile device, data modem, or a cartographic display. [Abstract].

In support of her rejection, the Examiner asserts that *Mizikovsky* discloses the received data including information identifying the data as voice, text, image, or moving picture data. In providing support for this assertion, the Examiner cites to the caller ID processor 44 of *Mizikovsky*, stating it is adapted to compare the received calling party identifying data with the identifying data previously stored in caller ID memory 46 to determine if the calling party is one of the previously selected or preprogrammed calling parties as disclosed in col. 8, lines 13-18. However, Appellant maintains that the teachings are insufficient to anticipate the claim element.

Claim 1 clearly recites that the received data includes information identifying the received data as voice, text, image, or moving picture data. *Mizikovsky* merely discloses the received data including information identifying the calling party. This information is not directed to the type of information that is received, but merely the party who is sending the data. Once the system in *Mizikovsky* receives the calling party identifying data, the mobile station determines which peripheral response category has been assigned to that calling party and, based upon the peripheral

response category assigned, the mobile station may transmit the data to the assigned peripheral. As such, the data is never identified as voice, text, image, or moving picture data. The system of *Mizikovsky* merely directs the data to an assigned peripheral based upon the calling party information.

Based upon the teachings set forth in *Mizikovsky* as noted above, Appellant maintains that *Mizikovsky* fails to teach or suggest a mobile telephone including a receiving unit for receiving data that includes information identifying the received data as voice, text, image, or moving picture data. For at least this reason, Appellant maintains that *Mizikovsky* fails to anticipate the present invention.

2. *Mizikovsky* fails to teach or suggest an incoming-voice alert generating unit as set forth in independent claim 1

In further maintaining her rejection of independent claim 1, the Examiner asserts in paper 13, page 2, paragraph 1, that *Mizikovsky* teaches:

...an incoming voice alert generating unit (510, 522 exhibited in figure 5) for issuing an incoming call alert when data that has been received by said first data receiving unit represents voice data (which reads on column 7 lines 60-67);

Appellant disagrees that *Mizikovsky* discloses “an incoming-voice alert generating unit for issuing an incoming-call alert when data that has been received by the first data receiving unit represents voice data” as set forth in independent claim 1.

The Examiner relies on reference numerals 510 and 522 in Fig. 5 and col. 7, lines 60-67 of *Mizikovsky* for support of the teachings of the incoming-voice alert generating unit of the present invention. Appellant maintains that these teachings are insufficient to anticipate this claim element.

Mizikovsky discloses at col. 7, lines 59-67 as follows:

To receive this information, the user operates keypad 42 to enter the telephone number of that traffic information service and assigns thereto a cartographic display response category. Hence, when an incoming call is

received from that traffic information service, cartographic display 52f is activated and information of traffic congestion is received and displayed. The user thus is apprised of the locations of traffic congestion and may take remedial steps to avoid such congestion.

Additionally, *Mizikovsky* discloses, in connection with Fig. 5, that upon identification of a received calling party to which priority status has been assigned, an alert generator 48 is activated to generate a distinctive ringing indication which represents a priority telephone call. Additionally, as disclosed in Fig. 5 with regard to reference numerals 520 and 522, if the user has assigned a peripheral to the calling party, upon determination of the calling party, the system routes the channel to the appropriate peripheral.

In contrast, the present invention of claim 1 recites issuing an incoming-call alert when data that has been received by the first data receiving unit represents voice data. There is no determination made in *Mizikovsky* that is directed to determining the type of data that is being received. *Mizikovsky* merely teaches identifying the calling party and, based upon a setting made by the user, the data may be transferred to an assigned peripheral.

Appellant maintains that these teachings are insufficient to teach or suggest the incoming-voice alert generating unit of the present invention, and thus Appellant maintains that for at least this reason, independent claim 1 is not anticipated by *Mizikovsky*.

3. *Mizikovsky* fails to teach or suggest the incoming-image alert generating unit of independent claim 1

In further maintaining her rejection of independent claim 1, the Examiner asserts in paper 13, page 3, paragraph 1, that *Mizikovsky* teaches:

...and an incoming image alert generating unit (48) for generating an incoming call alert when data that has been received by said second data receiving unit (36) represents image data (which reads on column 3 lines 1-7).

Appellant disagrees that *Mizikovsky* discloses “an image processing unit including an incoming-image alert generating unit for generating an incoming-call alert when data that has been received by the second data receiving unit represents image data” as set forth in independent claim 1.

The Examiner relies on alert generator 48 of *Mizikovsky* to teach the incoming-image alert generating unit of the present invention. The Examiner further relies on data receiving unit 36 of *Mizikovsky* to teach the second data receiving unit of the image processing unit of the claimed invention. Further, in support of her rejection, the Examiner asserts that the image processing unit of *Mizikovsky* she is relying upon is reference 52a, the facsimile device. Appellant respectfully disagrees with the Examiner’s characterization of *Mizikovsky*.

At the outset, Appellant respectfully submits that audio and data processor receiver 36 and alert generator 48 are clearly disclosed as part of mobile station 10 and not facsimile device 52a as asserted by the Examiner. This is clearly depicted in Fig. 1.

Further, there is no teaching or suggestion in *Mizikovsky* that is directed to a substantive description of the operation of facsimile device 52a. *Mizikovsky* merely teaches routing the data to the assigned peripheral ID, i.e., the facsimile device. However, *Mizikovsky* fails to teach or suggest an incoming-image alert generating unit at the facsimile device for generating an incoming-call alert. Finally, there is no disclosure in *Mizikovsky*, with regard to the facsimile machine or with regard to the mobile station 10, that is directed to determining the type of image data that is received. As such, Appellant maintains that *Mizikovsky* fails to teach an image processing unit including an incoming-image alert generating unit as set forth in independent claim 1.

For all of the reasons set forth above, Appellant maintains that the Examiner has failed to establish *prima facie* anticipation by failing to provide references that teach or suggest all of the claim elements. As such, Appellant respectfully submits that claim 1 is patentable over *Mizikovsky*.

D. The Rejection Fails to Establish *Prima Facie* Anticipation of Independent Claim 2

Independent claim 2 is directed to a mobile telephone capable of communicating with a communication apparatus via a network and with an image processing unit that is capable of outputting an image. The mobile telephone includes a data receiving unit for receiving data transmitted from the communication apparatus wherein the received data includes information identifying the received data as voice, text, image or moving picture data. The mobile telephone further includes an incoming-call alert generating unit for issuing a first incoming-call alert when data that has been received by the data receiving unit represents voice data and a second incoming-call alert, which is different from the first incoming-call alert, when the data that has been received by the data receiving unit represents image data.

In maintaining her rejection of independent claim 2, the Examiner asserts in paper 13, page 4, paragraph 1, that *Mizikovsky* teaches:

...an incoming call alert generating unit (48) for issuing a first incoming call alert when data that has been received by said data receiving unit represents voice data and a second incoming call alert (which reads on column 2 lines 60-67), which is different from the first incoming call alert, when the data that has been received by said data receiving unit represents image data (which reads on column 3 lines 1-7).

Appellant disagrees that *Mizikovsky* discloses “a data receiving unit for receiving data transmitted from the communication apparatus wherein the received data includes information identifying the received data as voice, text, image, or moving picture data.” Appellant further disagrees that *Mizikovsky* discloses “an incoming-call alert generating unit for issuing a first incoming-call alert when data that has been received by the data receiving unit represents voice data and a second incoming-call alert, which is different from the first incoming-call alert, when the data

that has been received by the data receiving unit represents image data,” as set forth in independent claim 2.

As discussed above with regard to claim 1, *Mizikovsky* fails to teach or suggest a data receiving unit for receiving data transmitted from the communication apparatus wherein the received data includes information identifying the received data as voice, text, image, or moving picture data. At least for this reason, Appellant maintains that claim 2 is not anticipated by *Mizikovsky*.

In addition to the above argument, Appellant maintains that *Mizikovsky* fails to teach or suggest the incoming-call alert generating unit as claimed. The Examiner relies on col. 2, lines 60-67 and col. 3, lines 1-7, together with the alert generator 48, to teach or suggest this claim element.

Mizikovsky discloses in col. 2, line 60 - col. 3, line 11 as follows:

Examples of different types of responses include a distinctive ringing indicator to identify an incoming call having high priority, an incoming call to which a relatively high tariff has been allocated (e.g. a long distance call) or an incoming call having relatively lower priority. Another type of response includes a muted ringing alert, whereby the user is not informed of the receipt at the mobile station of an incoming call.

Still other types of responses include the activation of a peripheral device included in or coupled to the mobile station upon the receipt of an incoming call from a particular calling party. The peripheral device may be a scrambler which provides scrambled communication between the mobile station and the calling party, a voice recorder, such as a telephone answering machine, voice mail system, or the like, to record a message from the calling party without intervention by the user at the mobile station, or a data recorder to record automatically digital data that is transmitted to the mobile station by the calling party.

As can be seen from above, *Mizikovsky* discloses providing different types of responses depending upon the priority that has been assigned to the calling party. However, there is no teaching or suggestion in this citation or anywhere in *Mizikovsky* that is directed to issuing a particular type of incoming-call alert depending upon the type of data that is received. Specifically,

there is no teaching or suggestion in *Mizikovsky* that is directed to issuing a first incoming-call alert when data that has been received represents voice data. Further, there is no teaching or suggestion in *Mizikovsky* that is directed to a second incoming-call alert which is different from the first incoming-call alert when data that has been received by the data receiving unit represents image data. As *Mizikovsky* fails to teach or suggest all of the claim elements, Appellant maintains for the reasons included herein that the Examiner has failed to establish *prima facie* anticipation. Appellant maintains that independent claim 2 is patentable over *Mizikovsky*.

E. The Rejection Fails to Establish *Prima Facie* Anticipation of Dependent Claim 3

Claim 3 depends directly from claim 2. Appellant submits that the rejection under 35 U.S.C. § 102(b) based on *Mizikovsky* fails to establish *prima facie* anticipation for dependent claim 3 for at least the reasons set forth above concerning claim 2. Appellant further submits that dependent claim 3 is separately patentable and offers the following additional argument for the invention of claim 3.

The invention of claim 3 provides for the mobile telephone according to claim 2 and further includes a reception-incapable data transmitting unit which, when the image processing unit is incapable of receiving data, is for transmitting data indicative thereof to the communication apparatus that transmitted the data incapable of being received.

In support of her rejection of claim 3, the Examiner asserts in paper 13, page 4, paragraph 1, that *Mizikovsky* discloses:

...a reception incapable data transmitting unit (18) which, when said image processing unit is incapable of receiving data, is for transmitting data indicative thereof to said communication apparatus that transmitted the data incapable of being received (which reads on column 7 lines 21-31).

Appellant disagrees that *Mizikovsky* discloses “the reception-incapable data transmitting unit” as set forth in dependent claim 3.

The Examiner relies on *Mizikovsky*'s teachings in col. 7, lines 21-31 to teach the reception-incapable data transmitting unit of the present invention. *Mizikovsky* discloses in col. 7, lines 21-31, as follows:

Hence, and as one example, if a facsimile response category is assigned to a particular calling party, an incoming call received from that calling party activates facsimile device 52a and initiates an appropriate communication protocol at interface 52 such that an incoming facsimile message is received and indicia are printed automatically. Alternatively, if the user of the mobile station has previously prepared facsimile device 52a for the transmission of a facsimile message, an incoming call from that calling party will activate the automatic transmission of that facsimile message.

As can be clearly seen from the above citation, there is simply no discussion that is directed to a reception-incapable data transmitting unit which, when the image processing unit is incapable of receiving data, is for transmitting data indicative thereof to the communication apparatus that transmitted the data incapable of being received. As *Mizikovsky* fails to teach or suggest this claim element, it is respectfully submitted that the Examiner has failed to establish *prima facie* anticipation under 35 U.S.C. § 102. As such, Appellant maintains that dependent claim 3 is allowable over *Mizikovsky*.

F. The Rejection Fails to Establish *Prima Facie* Anticipation of Independent Claim 4

Independent claim 4 is directed to a mobile telephone capable of communicating with a communication apparatus via a network and with a plurality of image processing units that are capable of outputting images. The mobile telephone includes, *inter alia*, a data receiving unit for receiving data transmitted from the communication apparatus wherein the received data includes information identifying the received data as voice, text, image or moving picture data. The mobile telephone further includes an incoming-voice alert generating unit for issuing an incoming-call alert

when data that has been received by the data receiving unit represents voice data and a setting unit for setting which of the plurality of image processing units is to receive image data. The mobile telephone further includes an incoming-call alert generation controller for controlling the plurality of image processing units in such a manner said image processing unit that has been set by the setting unit will issue an incoming-call alert when it receives data representing image data.

As noted above with regard to claim 1, Appellant maintains that *Mizikovsky* fails to teach a data receiving unit for receiving data wherein the received data includes information identifying the received data as voice, text, image, or moving picture data. For at least this reason, Appellant maintains that claim 4 is not anticipated by *Mizikovsky*.

Further, as noted above with regard to claim 1, Appellant maintains that *Mizikovsky* fails to teach or suggest the incoming-voice alert generating unit of the present invention. For at least this reason, Appellant maintains that *Mizikovsky* fails to anticipate the present invention.

In further support of her rejection of independent claim 4, the Examiner asserts in paper 13, page 5, paragraph 1, that *Mizikovsky* teaches:

...a setting unit (42) for setting which of said plurality of image processing units is to receive image data (which reads on column 7 lines 14-19); and an incoming call alert generation controller (52) for controlling the plurality of image processing units in such a manner said image processing unit that has been set by said setting unit will issue an incoming calls alert when it receives data representing image data (which reads on column 7 lines 61-67).

Appellant disagrees that *Mizikovsky* discloses the setting unit and the incoming-call alert generating unit as set forth in independent claim 4.

In support of her rejection, the Examiner asserts that *Mizikovsky* discloses the setting unit of the claimed invention, citing to reference 42 in col. 7, lines 14-19. Appellant respectfully disagrees with the Examiner's assertions.

Mizikovsky discloses at col. 7, lines 14-21, as follows:

In response to the operation of keypad 42, the user may assign to selected calling parties a peripheral response category such that when an incoming call is received from that calling party, the appropriate peripheral device coupled to interface 52 is activated for communication with that calling party. The peripheral device is activated without intervention by the user such that the calling party may communicate with that peripheral device.

The mobile station of *Mizikovsky* allows a user to assign a peripheral response category to selected calling parties. Again, this assignment is based upon the identity of the calling party, and not the type of data that is being received. *Mizikovsky* fails to teach or suggest a setting unit for setting which of the plurality of image processing units is to receive image data. As *Mizikovsky* fails to teach or suggest all of the claim elements, at least for this reason, it is respectfully submitted that claim 4 is not anticipated by *Mizikovsky*.

Additionally, the Examiner asserts that *Mizikovsky* discloses the incoming-call alert generation controller, citing to col. 7, lines 61-67 (citation noted above) and reference numeral 52. However, again, although *Mizikovsky* discloses allowing the user to assign a peripheral response category to a particular calling party, these teachings are insufficient to teach or suggest controlling the plurality of image processing units in such a manner that the image processing unit that has been set by the setting unit will issue an incoming-call alert when it receives data representing image data. There is no disclosure in *Mizikovsky* that is directed to the peripheral devices except for the peripheral devices being activated and receiving the information and displaying the information. There is no disclosure that is directed to the peripheral devices generating incoming-call alerts. Further, there is no teaching or suggestion that is directed to the peripheral devices issuing incoming-call alerts when it receives data representing image data.

For all of these reasons, it is respectfully submitted that claim 4 is not anticipated by *Mizikovsky*. Based upon the Examiner's failure to provide a reference that teaches all of the claimed elements, it is respectfully submitted that claim 4 is not anticipated by *Mizikovsky*.

G. The Rejection Fails to Establish *Prima Facie* Anticipation of Independent Claim 5

Independent claim 5 is directed to an image processing unit capable of data communication with a mobile telephone and of image output. The mobile telephone is capable of communicating with a communication apparatus via a network. The image processing unit comprises a data receiving unit for receiving data, which has been transmitted from the communication apparatus and includes information identifying the received data as voice, text, image or moving picture, via the mobile telephone; and an incoming-image alert generating unit for issuing an incoming-call alert when data that has been received by the data receiving unit represents image data.

In maintaining her rejection of independent claim 5, the Examiner asserts in paper 13, page 5, paragraph 1, that *Mizikovsky* teaches:

...said image processing unit comprising: a data receiving unit (44) for receiving data, which has been transmitted from said communication apparatus, via said mobile telephone (which reads on column 6 lines 7-21) wherein the received data includes information identifying the received data as voice, text, image or moving picture data (which reads on Caller ID processor 44 is adapted to compare the received calling party identifying data with the identifying data previously stored in caller ID memory 46 to determine if the calling party is one of the previously selected, or pre-programmed calling parties disclosed in column 8 lines 13-18); and an incoming image alert generating unit (48) for issuing an incoming call alert when data that has been received by said data receiving unit represents image data (510, 522 exhibited in figures 1 and 5).

Appellant disagrees that *Mizikovsky* discloses the image processing unit comprising the data receiving unit and the incoming-image alert generating unit as set forth in independent claim 5.

The Examiner relies on caller ID processor 44 to teach the data receiving unit of the present invention. The Examiner further relies on alert generator 48 to teach the incoming-image alert generating unit of the present invention. The Examiner additionally relies on col. 6, lines 7-21, col. 8, lines 13-18, and Figs. 1 and 5, reference numerals 510 and 522, to support her assertions. Appellant maintains that these teachings are insufficient to anticipate the present invention.

At the outset, Appellant respectfully notes that audio and data processor transmitter 18 and caller ID processor 44 are part of mobile station 10. However, as clearly set forth in claim 5, the claimed invention is directed to an image processing unit comprising a data receiving unit for receiving data via the mobile telephone. As the Examiner is relying upon elements of the mobile telephone to anticipate the present invention, Appellant maintains that these teachings are insufficient to teach or suggest an image processing unit as claimed. For at least this reason, Appellant maintains that *Mizikovsky* fails to anticipate the present invention.

In addition to the above, as noted above with regard to claim 1, *Mizikovsky* fails to teach or suggest data including identifying information for identifying the received data as voice, text, image, or moving picture. For at least this reason, Appellant maintains that claim 5 is not anticipated by *Mizikovsky*.

Finally, there is no teaching or suggestion in *Mizikovsky* that is directed to an incoming-image alert generating unit for issuing an incoming-call alert when data has been received by the data receiving unit represents image data. There is simply no teaching in *Mizikovsky* that is directed to identifying the type of data that is being processed through this system. Further, there is simply no teaching that is directed to generating an alert when the data that has been received represents image data.

For all of the reasons set forth above, Appellant maintains that *Mizikovsky* fails to teach or suggest all of the claim elements. As such, Appellant maintains that the Examiner has failed to establish *prima facie* anticipation under 35 U.S.C. § 102. As such, claim 5 is patentable over *Mizikovsky*.

H. The Rejection Fails to Establish *Prima Facie* Anticipation of Independent Claim 6

Independent claim 6 is directed to a method of controlling a mobile telephone capable of communicating with a communication apparatus via a network and of communicating with an image processing unit that is capable of outputting an image. The method includes receiving data, which is transmitted from the communication apparatus and includes information identifying the received data as voice, text, image, or moving picture, in such a manner that the data can be transmitted to the image processing unit. The method further includes issuing a first incoming-call alert when the received data is voice data and issuing a second incoming-call alert, which is different from the first incoming-call alert, when the received data is image data.

As noted above, with regard to claim 1, *Mizikovsky* fails to teach or suggest data including identifying information identifying the received data as voice, text, image, or moving picture. For at least this reason, it is respectfully submitted that claim 6 is not anticipated by *Mizikovsky*.

Further, as discussed above with regard to claim 1, *Mizikovsky* fails to teach or suggest issuing an incoming-call alert when the received data is voice data. For at least this reason, it is respectfully submitted that claim 6 is not anticipated by *Mizikovsky*.

Finally, as discussed with regard to claim 2, *Mizikovsky* fails to teach or suggest issuing a second incoming-call alert which is different from the first incoming-call alert when the received data is image data. As such, for all the reasons set forth above, it is respectfully submitted that claim 6 is not anticipated by *Mizikovsky* as *Mizikovsky* fails to teach or suggest all of the claim elements.

Appellant maintains that the Examiner has failed to establish *prima facie* anticipation by failing to provide a reference that teaches or suggests all of the claim elements. As such, Appellant maintains independent claim 6 is patentable over *Mizikovsky*.

I. The Rejection Fails to Establish *Prima Facie* Anticipation of Independent Claim 7

Independent claim 7 is directed to a method of controlling a mobile telephone capable of communicating with a communication apparatus via a network and of communicating with a plurality of image processing units that are capable of outputting images. The method includes receiving data, which is transmitted from the communication apparatus and includes information identifying the received data as voice, text, image, or moving picture, in such a manner that the data can be transmitted to the image processing units; issuing an incoming-call alert when data that has been received is data representing voice data; setting which of the plurality of image processing units is to receive image data; and controlling the plurality of image processing units in such a manner the image processing unit that has been set will issue an incoming-call alert when it receives data representing image data.

As noted above with regard to claim 1, *Mizikovsky* fails to teach or suggest data including information identifying the received data as voice, text, image, or moving picture. For at least this reason, it is respectfully submitted that *Mizikovsky* fails to anticipate the present invention.

Further, as noted above, *Mizikovsky* fails to teach or suggest issuing an incoming-call alert when data that has been received is data representing voice data. For at least this reason, it is respectfully submitted that claim 7 is not anticipated by *Mizikovsky*.

Further, as set forth with regard to claim 4, *Mizikovsky* fails to teach setting which of the plurality of image processing units is to receive image data. For at least this reason, Appellant maintains that *Mizikovsky* fails to anticipate the present invention.

Finally, as set forth above with regard to claim 4, *Mizikovsky* fails to teach or suggest controlling the plurality of image processing units in such a manner that the image processing unit that has been set will issue an incoming-call alert when it receives data representing image data.

For all the reasons set forth above, Appellant maintains that the Examiner has failed to establish *prima facie* anticipation by failing to provide references that teach or suggest all of the claim elements. As such, Appellant maintains that claim 7 is patentable over *Mizikovsky*.

J. The Rejection Fails to Establish *Prima Facie* Anticipation of Independent Claim 8

Independent claim 8 is directed to a method of controlling an image processing unit capable of data communication with a mobile telephone and of image output. The mobile telephone is capable of communicating with a communication apparatus via a network. The method includes receiving data, which has been transmitted from the communication apparatus and includes information identifying the received data as voice, text, image or moving picture, via the mobile telephone; and issuing an incoming-call alert when data that has been received represents image data.

As noted above, with regard to claim 5, *Mizikovsky* fails to teach or suggest data including information identifying the received data as voice, text, image, or moving picture. For at least this reason, Appellant maintains that *Mizikovsky* fails to anticipate the present invention.

Further, as noted with regard to claim 5, *Mizikovsky* fails to teach or suggest issuing an incoming-call alert when data that has been received represents image data.

For the reasons set forth above, Appellant maintains that the Examiner has failed to establish *prima facie* anticipation under 35 U.S.C. § 102 by failing to provide references that teach or suggest all of the claim elements. As such, Appellant maintains that claim 8 is patentable over the references as cited.

VIII. CONCLUSION

The withdrawal of the outstanding rejections and the allowance of claims 1-8 is earnestly solicited.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By 

D. Richard Anderson, #40,439

DRA/CMV/jdm
0905-0236P

P.O. Box 747
Falls Church, VA 22040-0747
(703) 205-8000

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IX. CLAIMS APPENDIX

1. (Previously Presented) A data communication system comprising a mobile telephone capable of communicating with a communication apparatus via a network, and an image processing unit capable of data communication with said mobile telephone and of image output;

wherein said mobile telephone includes:

a first data receiving unit for receiving data transmitted from said communication apparatus wherein the received data includes information identifying the received data as voice, text, image or moving picture data;

a data transmitting unit for transmitting the data received by said first data receiving unit to said image processing unit; and

an incoming-voice alert generating unit for issuing an incoming-call alert when data that has been received by said first data receiving unit represents voice data; and

said image processing unit includes:

a second data receiving unit for receiving data transmitted from said data transmitting unit of said mobile telephone; and

an incoming-image alert generating unit for generating an incoming-call alert when data that has been received by said second data receiving unit represents image data.

2. (Previously Presented) A mobile telephone capable of communicating with a communication apparatus via a network and with an image processing unit that is capable of outputting an image, comprising:

a data receiving unit for receiving data transmitted from said communication apparatus wherein the received data includes information identifying the received data as voice, text, image or moving picture data;

a data transmitting unit for transmitting the data receiving by said data receiving unit to said image processing unit; and

an incoming-call alert generating unit for issuing a first incoming-call alert when data that has been received by said data receiving unit represents voice data and a second incoming-call alert, which is different from the first incoming-call alert, when the data that has been received by said data receiving unit represents image data.

3. (Previously Presented) The mobile telephone according to claim 2, further comprising a reception-incapable data transmitting unit which, when said image processing unit is incapable of receiving data, is for transmitting data indicative thereof to said communication apparatus that transmitted the data incapable of being received.

4. (Previously Presented) A mobile telephone capable of communicating with a communication apparatus via a network and with a plurality of image processing units that are capable of outputting images, comprising:

a data receiving unit for receiving data transmitted from said communication apparatus wherein the received data includes information identifying the received data as voice, text, image or moving picture data;

a data transmitting unit for transmitting the data received by said data receiving unit to said image processing units;

an incoming-voice alert generating unit for issuing an incoming-call alert when data that has been received by said data receiving unit represents voice data;

a setting unit for setting which of said plurality of image processing units is to receive image data; and

an incoming-call alert generation controller for controlling the plurality of image processing units in such a manner said image processing unit that has been set by said setting unit will issue an incoming-call alert when it receives data representing image data.

5. (Previously Presented) An image processing unit capable of data communication with a mobile telephone and of image output, said mobile telephone being capable of communicating with a communication apparatus via a network, said image processing unit comprising:

a data receiving unit for receiving data, which has been transmitted from said communication apparatus and includes information identifying the received data as voice, text, image or moving picture, via said mobile telephone; and

an incoming-image alert generating unit for issuing an incoming-call alert when data that has been received by said data receiving unit represents image data.

6. (Previously Presented) A method of controlling a mobile telephone capable of communicating with a communication apparatus via a network and of communicating with an image processing unit that is capable of outputting an image, said method comprising the steps of:

receiving data, which is transmitted from the communication apparatus and includes information identifying the received data as voice, text, image or moving picture, in such a manner that the data can be transmitted to the image processing unit;

issuing a first incoming-call alert when the received data is voice data; and

issuing a second incoming-call alert, which is different from the first incoming-call alert, when the received data is image data.

7. (Previously Presented) A method of controlling a mobile telephone capable of communicating with a communication apparatus via a network and of communicating with a plurality of image processing units that are capable of outputting images, said method comprising the steps of:

receiving data, which is transmitted from the communication apparatus and includes information identifying the received data as voice, text, image or moving picture, in such a manner that the data can be transmitted to the image processing units;

issuing an incoming-call alert when data that has been received is data representing voice data;

setting which of the plurality of image processing units is to receive image data; and

controlling the plurality of image processing units in such a manner the image processing unit that has been set will issue an incoming-call alert when it receives data representing image data.

8. (Previously Presented) A method of controlling an image processing unit capable of data communication with a mobile telephone and of image output, said mobile telephone being capable of communicating with a communication apparatus via a network, said method comprising the steps of:

receiving data, which has been transmitted from said communication apparatus and includes information identifying the received data as voice, text, image or moving picture, via said mobile telephone; and

issuing an incoming-call alert when data that has been received represents image data.